COLE'S EX'OR v. MARTIN.—Decided at Richmond, February 12, 1901.—*Cardwell*, J. Absent, *Phlegar*, J:

1. CHANCERY PRACTICE—*Statute of limitations—Issue—Exceptions.* The defence of the statute of limitations to a claim asserted before a commissioner in chancery may be made by an acceptance to the commissioner's report. The mere fact that, subsequently, the claimant asserts his claim by a petition filed in the cause, upon which no process issues, does not render it necessary to make the issue of the bar of the statute again.

2. STATUTE OF LIMITATIONS—*New promise—Admission in will—Promise to account—Several debts.* A letter asking for an account and promising to pay it, will not be held to apply to old accounts, the last items of which are from seven to fifteen years' standing, and which are subject to sundry payments and set-offs, leaving uncertain and unascertainable balances when the writer owes the promisee an account then current, and another of recent date; nor will a clause in a will of the debtor admitting a debt be held to apply to such old accounts, but both letter and will will be deemed to be applicable only to the current account and the one of recent date.

3. STATUTE OF LIMITATIONS—*New promise—Uncertain amount—Extrinsic evidence.* When there is a promise to pay, not specifying any amount, but which can be made certain as to the amount, extrinsic evidence may be received to ascertain the amount due. It is sufficient if the true amount is capable of being made certain.

STATUTE OF LIMITATIONS—*New promise—Admisseon—Case in judgment.* A new promise to remove the bar of the statute of limitations must be determinate and unequivocal; and to imply a promise of payment from a subsequent acknowledgment, such acknowledgment must be an unqualified admission of a subsisting debt which the party is liable for and willing to pay. In the case in judgment, the promise to pay does not sufficiently identify the debt intended to be paid.

JONES v. TUNIS.—Decided at Richmond, February 12, 1901.—*Phlegar*, J. Absent, *Keith*, P:

1. SPECIFIC PERFORMANCE—*Inability to perform.* The absolute inability of a defendant to perform his contract at all when called upon by the court to do so, prevents a decree for specific performance, even though the defendant intentionally rendered himself unable to perform.

2. SPECIFIC PERFORMANCE—*Inability to perform—Damages—Adequate remedy at law.* When a contract is clearly proved, and the only objection to a decree for specific performance is the defendant's inability to perform, a court of equity will usually ascertain and decree the damages to which the complainant is entitled by reason of defendant's breach, in order to do complete justice and prevent a multiplicity of suits. But where the plaintiff knew when he sued that specific performance was impossible, no recovery of damages can be had, as the complainant has as complete a remedy at law as a court of chancery could give him.

BRESEE v. BRADFIELD.—Decided at Richmond, March 14, 1901.—*Keith*, P. Absent, *Whittle*, J:

1. CHANCERY PRACTICE—*Reference for account—Reference to take evidence.* Where, from the nature of the case and of the relief sought, an account is neces-